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Message Text

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ACTION OES-06

INFO OCT-01 EUR-12 ISO-00 PM-04 ACDA-07 CIAE-00 INR-07
IO-13 L-03 NSAE-00 NSC-05 EB-07 NRC-05 DODE-00 FEA-01
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TO SECSTATE WASHDC PRIORITY 8447
INFO USMISSION EC BRUSSELS
USERDA WASHDC PRIORITY
USERDA GERMANTOWN PRIORITY
AMEMBASSY BONN
AMEMBASSY BRUSSELS NN
AMEMBASSY COPENHAGNE
AMEMBASSY DUBLIN
USMISSION GENEVA
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DEPT PASS IO/SCT

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TAGS:PARM, TECH, IAEA, EC
SUBJECT: EURATOM/IAEA SAFEGUARDS

REF: (A) EC BRUSSELS 11406, (B) IAEA VIENNA 9731,
(C) EC BRUSSELS 11970

SUMMARY: PRELIMINARY ANALYSIS BY MISSION OF TEXT OF PROPOSAL FOR
COUNCIL REGULATION TRANSMITTED BY REFTEL A REVEALS MANY
INSTANCE WHERE WORLDING DIFFERS FROM PROVISIONS SET
FOR IN INFCIRC/193, IAEA/EURATOM AGREEMENT APPROVED BY
IAEA BOARD OF GOVERNORS AND SIGNED BY EC AND SEVEN
MEMBER STATE. IN EVERY SUCH CASE, CHANGE IN WORDING
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HAS SPECIFIC OR POSSIBLE EFFECT OF LIMITING RIGHTS OF

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IAEA OR OBLIGATIONS OF EC AND MEMBER STATES. THUS, ADOPTION OF REGULATION BY EC CAN ONLY SET STAGE FOR SERIES OF CONFRONTATIONS BETWEEN PLANT OPERATORS AND EURATOM PERSONNEL ON ONE HAND AND IAEA ON OTHER. END SUMMARY.

FOLLOWING DIFFERENCES APPEAR BETWEEN ARTICLES OF PROPOSED REGULATION (REG.) AND ARTICLES OF INFCIRC/193 (AGREEMENT OR PROTOCOL).

1. ARTICLE 3 OF REG REFERS TO "CHECKING THE DATA ON THE FUNDAMENTAL CHARACTERISTICS" OF INSTALLATIONS. AGREEMENT ARTICLE 48 REFERS TO "VERIFY THE DESIGN INFORMATION PROVIDED TO THE AGENCY PRUSUANT TO ARTICLES 42 TO 45 FOR THE PURPOSE STATE IN ARTICLE 46." ARTICLE 46 LISTS SIX DIFFERENT PURPOSES FOR WHICH DESIGN INFORMATON SHAL BE USED. PHRASE "DATA ON THE FUNDAMENTAL CHARACTERISTICS" DOES NOT APPEAR. NOR DOES PHRASE APPEAR AMONG FOUR TYPES OF INFORMATON SPECIFIED IN ARTICLE 43 TO BE INCLUDED IN DESIGN INFORMATION. INTRODUCTION OF STRANGE PHRASE INTO REGULATON WILL AT LEAST THROW CLOUD OVER RIGHTS OF AGENCY SPELLED OUT IN AGREEMENT.

2. ARTICLE 4 OF REG REFERS IN FIRST PARA TO AGENCY BEING PERMITTED TO VERIFY AND CHANGES IN SPECIFIC INSTALLATIONS BETWEEN INITIAL REPORT AND ENTRY INTO FORCE OF SUBSIDIARY ARRANGEMENTS. ARTICLE 71(A) OF AGREEMENT, HOWEVER, STATES THAT AGENCY MAY MAKE AD HOC INSPECTIONS IN ORDER TO IDENTIFY AND VERIFY SUCH CHANGES. OMISSION OF "IDENTIFY" COULD IMPLY THAT AGENCY WOULD BE LIMITED TO VERIFYING ONLY THOSE CHANGES OF WHICH IT HAS BEEN INFORMED PURSUANT TO ARTICLE 45 OF AGREEMENT.

3. ARTICLE 4 OF REG, IN SECOND PARA, REFERS TO STRATEGIC POINTS SPECIFIED IN COMMISSION REGULATION. MISSION DOES NOT HAVE COPY OF REGULATION AND IS THERE-FORE UNABLE TO COMPARE WITH AGREEMENT. WE DON NOTE THAT HIS PARA REFERS TO "MATERIAL SUBJECT TO VERIFI-
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CATION" WHILE RELEVANT ARTICLE 76 OF AGREEMENT REFERS TO "MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREE-MENT." SIMILAR SUBSTITUTION OCCURS IN REG. ARTICLES 6(B) AND 8(B). EFFECT OF THIS SUBSTITUTION NOT CLEAR, BUT MUST BE ASSUMED PURPOSEFUL RE IMPLEMENTATION.

4. ARTICLE 6 OF REG USES WORLD "CHECK" TO BEGIN EACH SUB-PARA. RELEVAN ARTICLE 27 OF AGREEMENT USES

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"VERIFY" IN EACH INSTANCE. "CHECK COULD IMPLY
SOMETHING LESS THAN "VERIFY" IN SAFEGUARDS CONTEXT.
SUB-PARA (C) OF REG. ARTICLE 6, INCIDENTALLY,
REFERS TO "BOOK STOCK" WHEREAS RELEVANT ARTICLE 72(C)
OF AGREEMENT REFERS TO "BOOK INVENTORY," A TERM DEFINED
IN AGREEMENT ARTICLE 98.

5. REG. ARTICLE 6, IN PARA WHICH FOLLOWS SUB-PARA
(C) REFERS ONLY TO ACCOUNTING RECORDS" WHILE RELEVANT
ARTICLE 76(C) OF AGREEMENT, BY REFERENCE TO ARTICLES
51 TO 58 OF AGREEMENT, ENCOMPASSES (IN ARTICLE 54)
BOTH ACCOUNTING RECORDS AND "OPERATIING RECORDS FOR
FACILITIES" CONTAINING NUCLEAR MATERIAL SUBJECT TO
SAFEGUARDS UNDER AGREEMENT.

6. LAST PARA OF REG. ARTICLE 6 REFERS TO "INSPECTION
SCHEDULE" WHILE AGREEMENT AND PROTOCOL (E.G., ARTICLE
80 OF AGREEMENT) REFER ONLY TO "INSPECTION EFFORT,"
IN TERMS OF MAN-YEARS OF INSPECTION, WITH LATTER
DEFIEND IN AGREEMENT ARTICLE 98.

7. REG. ARTICLE 8(1) SUB-PARA (C) AGAIN USES
"CHECKING" WHLE RELEVANT ARTICLE 74(C) OF AGREEMENT
USES "VERIFY."

8. REG. ARTICLE 8(2), SUB-PARA (A) USES "ENSURE"
WHILE RELEVANT ARTICLE 75(A) USES "OBSERVE." CHANGE
RAISES IMPLICATION THAT AGENCY INSPECTOR WOULD NOT BE
PRESENT WHILE SAMPLES WERE TAKEN, BUT COULD BE
"ENSURED" BY SOME OTHER MEANS. SUB-PARA (C) HAS
TYPOGRAPHICAL ERROR WHICH SHOULD BE CORRECTED TO READ
"BATCHES OF ITEMS."

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9. REG. ARTICLE 8(3) SUB-PARA (B) USES PHRASE
"INTERFERENCE-DETECTION," WHILE RELEVANT AGREEMENT
ARTICLE 75 (E) USES "TAMPER-INDICATING." SUB-PARA
(C) USES PHRASE "INSPECTION ACTIVITIES" WHILE RELEVANTARTICLE
22 USES "INSPECTION EFFORT."

10. REG. ARTICLE 10 FIRST PARA PERMITS AGENCY
INSPECTIONS (OF ANY TYPE) ONLY WHEN CARRIED OUT
"AT THE SAME TIME AND IN CONJUNCTION WITH
INSPECTIONS CARRIED OUT BY THE COMMUNITY". RELEVANT
ARTICLE 14 (A) OF PROTOCOL APPLIES ONLY TO
ROUTINE INSPECTIONS AND EVEN THE REQUIREMENT THAT
ROUTINE INSPECTIONS "SHALL BE CARRIED OUT SIMUL-
TANEOUSLY" WITH COMMISSION'S INSPECTION ACTIVITIES
IS BUBJECT TO VERY IMPORTANT LIST OF CONDITIONS

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SET FORTH IN ARTICLE 13 (A) THRU (E) OF PROTOCOL
BEING MET. PURPOSE OF QUALIFICATION IN PROTOCOL
ARTICLE 14 (A) WAS TO AVOID SITUATION WHERBY
AGENCY WOULD BE PRECLUDED FROM CARRYING OUT INSPEC-
TIONS BY EURATOM MERELY REFRAINING FROM CARRYING
OUT ITS INSPECTIONS. FURTHERMORE, WITH RESPECT TO
AD HOC AND SPECIAL INSPECTIONS, AGREEMENT NO-
WHERE IMPOSES ANY REQUIREMENT THAT EITHER TYPE BE
CARRIED OUT AT SAME TIME AS COMMISSION INSPECTIONS.
SITUATION CREATED IN REG. ARTICLE 10 THUS
REPRESENTS SEVERAL MAJOR UNILATERIAL LIMITATIONS
ON AGENCY'S RIGHTS AS SET FORTH IN SIGNED FORMAL
AGREEMENT.

11. REG. ARTICLE 10, SECOND PARA PERMITS
BOTH AD HOC AND ROUTINE AGENCY INSPECTIONS TO BE

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ACTION OES-06

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CARRIED OUT ONLY THROUGH OBSERVATION OF ACTIVITIES
OF COMMISSION INSPECTORS. AGREEMENT CONTAINS
NO SUCH UNQUALIFIED LIMITATION ON AGENCY AD HOC
INSPECTIONS. RELEVANT ARTICLE 24 OF PROTOCOL
MERELY SAYS THAT WHENEVER AGENCY CAN ACHIEVE
PURPOSE OF AD HOC INSPECTIONS THROUGH OBSERVATIONS
OF COMMUNITY INSPECTION ACTIVITIES IT SHALL DO SO.
THAT PROVISION CLEARLY LEAVES SUCH DETERMINATION
SOLELY TO AGENCY.

12. REG ARTICLE 10, THIRD PARA, REFERS IN TWO PLACES
TO "INDEPENDENT INSPECTION ACTIVITIES" OF AGENCY
INSPECTORS, WHILE RELEVANT ARTICLE 14B(I) OF
PROTOCOL REFERS TO ACTIVITIES OF AGENCY INSPECTORS
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"TO BE IMPLEMENTED OTHER THAN THROUGH THE OBSERVATION
OF THE INSPECTION ACTIVITIES OF THE COMMUNITY."

13. SUB-PARA (B) OF THRID PARA REG ARTICLE 10, CALLS
FOR "WRITTEN DECLARATION" BY AGENCY INSPECTORS TO BOTH OPERATOR
AND COMMISSION INSPECTORS, WHILE RELEVANT ARTICLE 14B(II)
OF PROTOCOL INCLUDES NO MENTION OF SUCH "WRITTEN DELCARATIONS."

1. LAST PARA OF REG ARTICLE 10, IN ADDITION TO
USING PHRASE "INDEPENDENT INSPECTION ACTIVITIES" ALSO
IMPOSES REQUIREMENT FOR WRITTEN DECLARATION IN
CONNECTION WITH AD HOC INSPECTIONS. NO SUCH
REQUIREMENT APPEARS IN AGREEMENT OR PROTOCOL.
15. REG. ARTICLE 12 REFERS TO EXCEPTIONAL CIRCUMSTANCE
WHEN COMMISSION "PLACES CONSIDERABL RESTRICTIONS ON
THE AGENCY'S RIGHT OF ACCESS." RELEVANT ARTICLE 76(D)
OF AGREEMENT REFERS TO "COMMUNITY CONCLUDING THAT ANY
UNUSUAL CIRCUMSTANCES REQURIE EXTENDED LIMITATIONS ON
ACCESS BY THE AGENCY," IN WHICH CASE, COMMUNITY AND
AGENCY SHALL MAKE NECESSARY ARRANGEMENTS. REG.
WORDING IMPLIES THAT COMMISSION CAN UNILATERALLY
IMPOE LIMITATIONS OF AGENCY'S RIGHT OF
ACCESS. ARTICLE 76(D) ALSO REFERS TO AGENCY DISCHARGING
ITS "SAFEGUARDS RESPONSIBILITIES," WHILE REG ARTICLE
12 REFERS TO AGENCY FULFILLING ITS "OBLIGATIONS AS
REGARDS GUARANTEES," THEREBY SHIFTING CRITERION FOR
ESTABLISHMENT OF ALTERNATE ARRANGEMENTS OR MEASURES.

16. REG ARTICLE 13 CALLS FOR GRANTING OF ACCESS BY
AGENCY INSPECTORS ONLY UPON PRESENTATION OF COMMISSION
DOCUMENT INDICATING ACCEPTANCE BY COMMISSION AND
MEMBER STATES. O SUCH REQURIEMENT IS MENTIONED IN

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AGREEMENT OR PROTOCOL.

17. NONE OF FOREGOING DEPARTURES FROM PROVISIONS OF
FORMAL AGREEMENT HAVE BEEN DISCUSSED BY EURATOM WITH
AGENCY SECRETARIAT, TO MISSION'S KNOWLEDGE. MOREOVER,
SECRETARIAT HAD BEEN UNAWARE OF EXISTENCE PROPOSED REG
AS TRANSMITTED REFTEL A WHICH DIFFERS
SUBSTANTIALLY FROM TEXT PUBLISHED IN EC JOURNAL
IN SEPTEMBER. PUBLISHED TEXT WAS CONSIDERED BY
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SECRETARIAT TO BE MUCH MORE CONSISTENT WITH LETTER AND
SPIRIT OF AGREEMENT. STONE

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